

Department of Homeland Security

§ 239.1

shall not be administratively appealable during proceedings initiated under section 238 of the Act and this part.

(h) *Record of proceeding.* The Service shall maintain a record of proceeding for judicial review of the Final Administrative Removal Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to: the charging document (Notice of Intent); the Final Administrative Removal Order (including any supplemental memorandum of decision); the alien's response, if any; all evidence in support of the charge; and any admissible evidence, briefs, or documents submitted by either party respecting deportability. The executed duplicate of the Notice of Intent in the record of proceedings shall be retained as evidence that the individual upon whom the notice for the proceeding was served was, in fact, the alien named in the notice.

[62 FR 10365, Mar. 6, 1997, as amended at 64 FR 8494, Feb. 19, 1999; 67 FR 39258, June 7, 2002; 76 FR 53791, Aug. 29, 2011]

PART 239—INITIATION OF REMOVAL PROCEEDINGS

Sec.

239.1 Notice to appear.

239.2 Cancellation of notice to appear.

239.3 Effect of filing notice to appear.

AUTHORITY: 8 U.S.C. 1103, 1221, 1229; Homeland Security Act of 2002, Public Law 107-296; 8 CFR part 2.

SOURCE: 62 FR 10366, Mar. 6, 1997, unless otherwise noted.

§ 239.1 Notice to appear.

(a) *Issuance of notice to appear.* Any immigration officer, or supervisor thereof, performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

- (1) District directors (except foreign);
- (2) Deputy district directors (except foreign);
- (3) Chief patrol agents;
- (4) Deputy chief patrol agents;
- (5) Assistant chief patrol agents;
- (6) Patrol agents in charge;
- (7) Assistant patrol agents in charge;
- (8) Field operations supervisors;

- (9) Special operations supervisors;
- (10) Supervisory border patrol agents;
- (11) Service center directors;
- (12) Deputy service center directors;
- (13) Assistant service center directors for examinations;
- (14) Supervisory district adjudications officers;
- (15) Supervisory asylum officers;
- (16) Officers in charge (except foreign);
- (17) Assistant officers in charge (except foreign);
- (18) Special agents in charge;
- (19) Deputy special agents in charge;
- (20) Associate special agents in charge;
- (21) Assistant special agents in charge;
- (22) Resident agents in charge;
- (23) Supervisory special agents;
- (24) Directors of investigations;
- (25) District directors for interior enforcement;
- (26) Deputy or assistant district directors for interior enforcement;
- (27) Director of detention and removal;
- (28) Field office directors;
- (29) Deputy field office directors;
- (30) Supervisory deportation officers;
- (31) Supervisory detention and deportation officers;
- (32) Directors or officers in charge of detention facilities;
- (33) Directors of field operations;
- (34) Deputy or assistant directors of field operations;
- (35) District field officers;
- (36) Port directors;
- (37) Deputy port directors;
- (38) Supervisory service center adjudications officers;
- (39) Unit Chief, Law Enforcement Support Center;
- (40) Section Chief, Law Enforcement Support Center; or
- (41) Other officers or employees of the Department or of the United States who are delegated the authority as provided by 8 CFR 2.1 to issue notices to appear.

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

[68 FR 35275, June 13, 2003, as amended at 70 FR 67089, Nov. 4, 2005]